IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITIONS NO. 38, 105, 106 AND 107 OF 2001.

WRIT PETITION NO. 38/2001.

Shri Cosme Francisco
Bom Parto da Silva Costa Araujo,
r/o House No.118,
Chicalim, Vasco-da-Gama, Goa. ... Petitioner.

VERSUS

1. The Collector,
South Goa District,
Government of Goa,
Margao, Goa.

2. Union of India,
through the Ministry of Defence,
New Delhi.

3. The Flag Officer Commanding
Goa Area,
Vasco-da-Gama, Goa. ... Respondents.

WRIT PETITION NO. 105/2001.

Mrs. Carmen Monteiro,
through her Power of Attorney,
Mr. Oscar Jesus Monteiro,
r/o Chicalim, Vasco-da-Gama,
Goa. ... Petitioner.

VERSUS

1. The Collector,
South Goa District,
Government of Goa,
Margao, Goa.

2. Union of India,
through Ministry of Defence,
New Delhi.

3. The Flag Officer Commanding,
Goa Area,
Vasco-da-Gama, Goa. ... Respondents.

Mr. M.S.Sonak, Advocate for the Petitioner.
Mr. A.N.S. Nadkarni, Advocate General with Ms. W. Coutinho, Government Advocate for Respondent No.1.
Mr. Joseph Gaz, Addl. Central Government Standing Counsel for the Respondents No.2 and 3.

WRIT PETITION NO. 106/2001.

Shri Umakant Anant Sarmalkar,
r/o Vasco-da-Gama, Goa. ... Petitioner.

VERSUS

1. The Collector,
   South Goa District,
   Government of Goa,
   Margao, Goa.

2. Union of India,
   Through Ministry of Defence,
   New Delhi.

3. The Flag Officer Commanding,
   Goa Area,
   Vasco-da-Gama, Goa. ... Respondents.

WRIT PETITION NO. 107/2001.

Shri Francisco Gregorio A. da Costa,
Through his Power of Attorney
Shri Rui Stephen Da Costa,
r/o Chicalim, Vasco-da-Gama,
Goa. ... Petitioner.

VERSUS

1. The Collector,
   South Goa District,
   Government of Goa,
   Margao, Goa.

2. Union of India,
   through Ministry of Defence,
   New Delhi.

3. The Flag Officer Commanding
   Goa Area,
   Vasco-da-Gama, Goa. ... Respondents.

Mr. M. S. Sonak, Advocate for the Petitioner.

Mr. A.N.S. Nadkarni, Advocate General with Mr. P.A. Kamat, Government Advocate for Respondent No.1.

Mr. Joseph Vaz, Addl. Central Government Standing Counsel for the Respondents No.2 and 3.

CORAM: **N.N. MHATRE &**
P.V. HARDAS, JJ.

DATE OF RESERVING THE JUDGMENT: 04.03.2004

DATE OF PRONOUNCING THE JUDGMENT: 12.03.2004

J U D G M E N T: **(PER HARDAS, J.)**

All the four petitions raise common questions and while granting Rule, were directed to be heard together. These petitions are therefore being decided by this common Judgment. The Petitioners pray for issuance of a writ of certiorari for quashing and setting aside the Award dated 16.03.2001.

2. The facts in brief as are necessary for the decision of these petitions are stated hereunder :-

The petitioners in all the petitions are the owners of a property which is covered by Notification dated 16.3.1992 issued by the second respondent and published by the first respondent in the Official Gazette dated 15.9.1993, in exercise of the powers conferred by Section 3 of the Works of Defence Act, 1903, hereinafter referred as the said Act for the sake of brevity. The said Notification declared that it was necessary to impose restrictions specified in Clause B of Section 2 of the said Act upon the enjoyment of land situated in the village of Chicalim,

Vasco-da-Gama, Mormugao Taluka, District South, described in the Schedule being land in the vicinity of the Naval Armament Depot, Goa, in order to keep the same free from buildings and other obstructions. Thereafter the petitioners received Notices under Sections 9 and 10 of the said Act in November, 2000. The petitioners lodged their objection and contended that the proceedings under the said Act had lapsed as they had been issued beyond the statutory time as stipulated and permitted by the said Act. After the filing of the petition an Award in respect of the land of the petitioners came to be passed on 16.03.2001

3. The only challenge in the present petitions on behalf of the petitioners is that a time schedule is provided under Section 9 for issuance of a declaration under the said Section after a declaration is issued under Section 3 of the said Act. Since the respondents had not adhered to the said declaration, Award which had been passed in pursuance to the declaration under Section 9 is null and void and deserves to be quashed.

4. On behalf of the respondents, it is urged that the provisions of Section 9 insofar as it sets a time limit for the issuance of the Notice, is not mandatory and merely because the notices under Section 9 have

been issued beyond the period specified in Section 9, the Award is not a nullity.

5. In order to appreciate the rival submissions of the parties, it is necessary to refer to Section 3 of the said Act:-

> " 3. Declaration and notice that restrictions will be imposed.-
>
> (1) Whenever it appears to the [Central Government] that it is necessary to impose restrictions upon the use and enjoyment of land in the vicinity of any work of defence or of any site intended to be used or to be acquired for any such work, in order that such land may be kept free from buildings and other obstructions, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorised to certify its orders.
>
> (2) The said declaration shall be published in the [Official Gazette] and shall state the district or other territorial division in which the land is situate and the place where a sketch plan of the land, which shall be prepared on a scale not smaller than six inches to the mile and shall distinguish the boundaries referred to in section 7, may be inspected; and the Collector shall cause public notice of the substance of the said declaration to be given at convenient places in the locality.

(3) The said declaration shall be conclusive proof that it is necessary to keep the land free from buildings and other obstructions. "

6. Section 7 of the said Act deals with the restrictions which can be imposed on the use of the land referred to in Section 3. Sub-Section (1) of Section 9 reads as under :-

" 9. Notice to persons interested. - (1) At any time before the expiration of -

(a) the period of eighteen months from the publication of the declaration referred to in section 3, or

(b) such other period not exceeding three years from the said publication as the [Central Government] [***] may, by notification in the [Official Gazette) direct in this behalf,

the Collector shall cause public notice to be given at convenient places on or near the land, stating the effect of the said declaration and that claims to compensation for all interests in such land affected by anything done or ordered in pursuance of such declaration may be made to him:

Provided that, where anything has been done in exercise of the powers conferred, in case of emergency by section 6, sub-section (3), the notice prescribed by this section shall be given as soon as may be thereafter. "

7. Perusal of sub-section (1) of Section 9 would show that a notice to the persons interested could be issued at any time before the expiration of the period of eighteen months from the publication of declaration under Section 3 or within such other period not exceeding three years from the declaration under Section 3 as the Central Government may direct. Thus, according to the learned counsel for the petitioners since this Act imposes restrictions on the use and enjoyment of the property, any notice issued under Section 9 beyond the period of eighteen months or maximum period of three years, would be de hors the provisions of this Act. It is therefore urged before us that the time limit as set out in sub-section (1) of Section 9 of the said Act is mandatory time limit which the authorities, issuing notice, must adhere to. It is also urged that an Award passed in pursuance to the notices which were issued beyond time were liable to be quashed and set aside.

8. Mr. Sonak, the learned counsel appearing for the petitioners, has referred to the Judgment of the Apex Court in **Ram Chand and others v. Union of India and others** reported in (1994) 1 S.C.C., 44 to contend that under the Land Acquisition Act, 1894, wherein no time limit has been prescribed, the Apex Court had stated that the power should be exercised within a time which can be held to be reasonable. It is also

urged by Mr. Sonak that resort cannot be had to Section 148 of Civil Procedure Code for extending the period specified in sub-section (1) of Section 9. He has further urged that unexplained and inordinate delay in completing the acquisition proceedings is a relevant factor in determining the colourable exercise of power in the context of land acquisition proceedings. Reliance is placed on the Judgement of the Division Bench of this Court in **Bharat s/o Maganbhai Kheta v. Nagpur Improvement Trust, Nagpur** reported in 1991 Bombay Law Reporter, 67.

9. According to us, the ratio of the Judgment in **Bharat s/o Maganbhai Keta (supra)** is not applicable to the facts of the present case. In the present case, the respondents in their affidavit have adequately explained the delay which was occasioned in the issuance of Notice under Section 9. Our attention was also invited to the Judgment of the Division Bench of this Court in **Iridium India Telecom Ltd. v. Motorola Inc. & Ors.** reported **in** 2004(1) All M.R., 418. The Division Bench of this Court held that Section 148 of the Code of Civil Procedure would not apply to the time set out in Order VIII Rule 1 for filing of the written statement. Relying on this judgment, it is contended before us, by the learned counsel for the petitioners, that the language in Order VIII Rules 1

and 10 is similar to the language of Section 9. According to us, the reliance on this judgment by the petitioners is wholly misplaced as Order VIII Rules 1 and 10 prescribe time limit for filing of written statement and the consequences which ensue on non-filing of the written statement within the extended time.

10 The real question which arises for determination in the present petitions is whether the time prescribed for issuance of the Notice under Section 9 is mandatory. Our attention was invited to sub-section (2) of Section 6 which states that the powers conferred by sub-section (1) shall not be exercised except in the context of what is stated in clauses (a) and (b) of sub-section (2). Thus it is urged before us by the respondents that sub-section (2) of Section 6 is mandatory. It is also urged before us that merely because a statute prescribes a time frame for the exercise of power, the provisions prescribing the time frame is not necessarily mandatory.

11. A plain reading of Section 9 goes to show that though sub-section (1) of Section 9 states that the notice may be issued at any time before the expiration of eighteen months or three years, the Legislators did

not intend the said time frame to be mandatory. The proceedings under this Act are not akin to the proceedings under the Land Acquisition Act as a land owner is neither divested of the possession nor of the ownership. This Act only imposes certain restrictions in the use and enjoyment of the land. It is no doubt true that by virtue of a declaration under Section 3 the market value of the land may be affected adversely. Therefore, in order not to keep the land owner in suspense indefinitely, the Legislators in their wisdom have given a time frame for issuance of the Notice under Section 9. Merely because the statute sets out a period within which the authorities have to act, the said provision cannot be construed as a mandatory provision on that score alone. Section 9 does not state that the authorities shall not have the power to issue notice under Section 9(1) after the lapse of the period specified therein. Section 9(1) also does not set out an eventuality in the event the notice is not issued within the time specified. Therefore the provisions of Section 9(1) which specify a time limit for issuing notice under Section 9 has to be read as a directory provision. There is no provision akin to Section 11A of the Land Acquisition Act, 1894 which states that in the event the Award is not made within a period of two years from the date of publication of the declaration the entire proceedings

for the acquisition of the land shall lapse. The Award therefore cannot be struck down on the ground that the notice under Section 9 had been issued beyond the period specified in Section 9(1) of the Act.

12. In the event the Notices under section 9 have been issued beyond the period specified in Section 9(1), to what relief is the affected party entitled to? If the statute prescribes certain time schedule for exercising the powers, the authorities are expected to act within the time schedule set out by the statute. If the time schedule is not construed as a mandatory time schedule the authorities are expected to exercise their powers within reasonable time of the expiration of the time schedule set out in the Act. In this case the declaration under Section 3 of the Act was issued on 6.03.1992. The Notification under Section 3 was published in the Official Gazette after sixteen months. The Notices under Section 9 were issued sometime in November, 2000. In the present case, therefore, it cannot be said that the authorities have acted within a reasonable time of the expiration of the time set out in Section 9(1). Though according to us, the time schedule set out in Section 9(1) is not mandatory, the authorities are expected to exercise their powers within a reasonable time after the expiration of the time schedule. In

the present case the authorities have taken nearly eight years. It is not pleaded before us that the Central Government had extended the period upto three years from the issuance of the Notification under Section 3. Therefore the authorities ought to have acted in a reasonable time after the expiration of the period of eighteen months from the issuance of the Notification under Section 3. The petitioners therefore would be entitled to an award of interest beyond eighteen months from the date of issuance of Notification under Section 3 till the issuance of Notices under Section 9. Moulding the relief, according to us, the petitioners would be entitled to simple interest at the rate of 12% per annum on the amount of compensation awarded to them from the period of eighteen months after the issuance of Notification under Section 3 till the issuance of Notice under Section 9. The respondents are directed to pay to the petitioners the amount of interest within four months from the date of this order.

13. The Writ Petitions are therefore partly allowed. Rule made absolute accordingly with no order as to costs.

NISHITA MHATRE, J.

P.V. HARDAS, J.

sl.